

March 22, 2024

[REDACTED]

Dr. Tia McKinnon
Director of Special Education
Charles County Public Schools
P.O. Box 2770
La Plata, Maryland 20646

RE: [REDACTED]
Reference: #24-129

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On January 23, 2024, MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that the Charles County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the following allegations:

1. The CCPS has not implemented an Individualized Education Program (IEP) that addressed the student’s identified needs since the start of the 2023-2024 school year, in accordance with 34 CFR §§300.101 and .324.
2. The CCPS has not ensured that the student was provided with the special education supports and accommodations as required by the IEP since the start of the 2023- 2024 school year, in accordance with 34 CFR §§ 300.101 and .323.
3. The CCPS has not ensured that the IEP team addressed parental concerns about failing grades during quarters one and two of the 2023-2024 school year, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is 16 years old and is identified as a student with specific learning disability (SLD) under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The student's IEP in effect at the beginning of the 2023-2024 school year was developed on November 22, 2022. The IEP reflects that the student's disability is SLD, and the areas impacted by his disability include math problem-solving and reading comprehension. The student is designated to obtain a Maryland High School Diploma upon graduation. The present levels of academic achievement and functional performance (PLAAFP) reflect that the student performed on a fourth-grade instructional level in reading comprehension and math problem-solving.

The student completed a student interview for secondary transition on November 16, 2022. The secondary transition education/training reflects that the student would like to attend a two-year college after high school and his deficits in fluid reasoning and visual-spatial impact his ability to do quantitative reasoning, simultaneous processing, abstract thinking, and attending to visual details. The November 13, 2023, progress reported towards the achievement of the student's post-secondary goals in employment training and education reflects the goals were "completed".

The IEP further reflects that the student has no communication or Assistive Technology needs, however, the IEP requires the following special considerations and accommodations for the student:

- text-to-speech for mathematics, science, and government;
- a human reader or signer for mathematics, science, and government; and
- extended time (1.5x).

The student's supplementary aids, services, program modifications, and supports include:

- Use of highlighters during instruction and assignments, daily;
- A reading comprehension intervention, every other day;
- Break down assignments into smaller units, as needed;
- Chunking of text(s), as needed; and
- Encourage the student to ask for assistance when needed, daily.

The IEP included goals in the areas of reading comprehension and math problem-solving. The IEP reflects that the student had made sufficient progress on his IEP goals as documented by his progress reports dated January 1, 2023, through November 13, 2023. The IEP required 20 hours weekly of specialized instruction inside the general education setting provided by the "general educator in consultation with the special educator." The IEP reflected that the team reviewed and discussed the student's Least Restrictive Environment (LRE) and determined that the student's IEP could be implemented inside the regular classroom with the supports of supplementary aids and services. The student's LRE was determined to be 80% or more inside general education per school day. The IEP did not provide the number of sessions the student will receive or any summary of service information.

2. On October 16, 2023, the complainant emailed the CCPS staff expressing her concerns about her son's grades and the lack of response from the student's teachers regarding her requests to discuss her son's grades.
3. There is no documentation of a response from CCPS staff regarding the parent's concerns.
4. There is documentation that on November 1, 2023, the student's grades were as follows: an "A" in literacy; a "B" in art and geometry; a "C" in JROTC; a "D" in biology, English II, and US History; and an "F" in foundations of technology.

5. On November 14, 2023, the IEP team met to review and revise the student's IEP. The prior written notice (PWN) drafted after the meeting reflects that the IEP team considered parental input, classroom progress, formal and/or informal assessments, and/or behavioral data. The team discussed the student's failing grade in foundations of technology, and the complainant shared that she emailed the counselor and the teacher about the grade; however, no one responded. The student's class was changed, and he was excused from assignments in his new class. The complainant also shared that she had attempted to contact the student's biology and English teachers with no response, but things were addressed at the school Open House. The CCPS staff noted that the student made the honor roll in the last two quarters of the 2022-2023 school year, and the complainant requested that she be contacted if the student did not do well. The CCPS team shared that the counselor would follow up with the complainant about the failing grade in foundations of technology and that the complainant should contact the student's case manager, an administrator, or the IEP facilitator to assist with communication with teachers. The CCPS teachers shared that the student is respectful and catches on quickly, however, he is distracted by peers, and this affects his work completion and submission. The team reviewed the student's grades for the end of the first quarter, and it was stated that he is making progress on his reading comprehension and math problem-solving goals. The IEP team determined that the student was not eligible for Extended School Year services (ESY) and agreed that he would continue to receive inclusion services in English, math, science, social studies, and literacy. The team reviewed the student's credits toward graduation, and it was stated that he had met the Student Service Learning (SSL) requirements. The student attended the meeting and shared his post-secondary goals and interests. The team reviewed and discussed the student's transition plan and obtained parental consent for referral to post-graduation transition services.
6. The IEP developed on November 14, 2023, reflects that the student's primary disability is SLD, and the areas affected by the disability are math problem-solving and reading comprehension.

The student's PLAAFP reflects that he performs on a third-grade instructional level in reading comprehension and math problem-solving.

The student's secondary transition education and training was developed using the results from a student interview dated September 26, 2023. The student's postsecondary goals and activities were updated.

The student's accommodations and supplementary aids, services, program modifications, and supports remained the same. The IEP reflects that the student was determined not eligible for ESY, and the progress reported on November 13, 2023, towards the achievement of the annual IEP goals, reflects he was making sufficient progress on his IEP goals.

The student's services were reduced to 16 hours and 40 minutes per week of specialized instruction inside the general education setting provided by the "general educator in consultation with the special educator." The IEP reflects that the team reviewed and discussed the student's LRE and considered implementing the student's IEP in the general education setting without supplementary aids and supports, and general education with supplementary aids and supports. The team determined that the student's IEP could be implemented inside the "regular classroom with the supports of supplementary aids and services..." The student's least restrictive environment was determined to be 80% or more inside general education per school day. The IEP does not provide a number of sessions or any summary of service information.

7. There is no documentation that CCPS provided prior written notice of the IEP team's decision to reduce the student's instructional hours at the November 14, 2023, IEP team meeting.
8. On January 20, 2024, the complainant emailed CCPS staff concerning her son's grades. The email reflects that the student had an "F" in English and an "A" in literacy; and his English teacher was not responding to her attempts to communicate. The complainant questioned if the student's English teacher was implementing his IEP and if any efforts were being made to ensure that her son did not fail. A member of the CCPS staff responded to the complainant's email and stated that he would reach out to the teacher and look over the gradebook. The IEP facilitator also followed up with the complainant to determine if the student's counselor or grade-level administrator had reached out to the parent to schedule a parent-teacher conference.
9. On January 25, 2024, the IEP facilitator emailed the complainant sharing that she met with the student and discussed working with him when he did not understand his assignments and providing him a quiet space to work in her office when necessary.
10. The progress reported on January 14, 2024, towards the achievement of the annual reading comprehension and math problem-solving goals, reflects that the student was making sufficient progress to achieve the goals.
11. On February 8, 2024, the IEP facilitator emailed the complainant regarding the meeting request. The complainant informed the IEP facilitator that she had been contacted and a meeting would be scheduled. There is no documentation that the meeting was scheduled.
12. While there is some documentation of the provision of the student's accommodations and modifications, it is insufficient to demonstrate that the student's accommodations and modifications were consistently provided as required by the IEP.
13. There is no documentation that the special educator consulted with the student's general education teachers as required by the IEP.
14. The student ended the first semester (January 18, 2024) with an "A" in literacy, a "B" in JROTC II and art, a "C" in geometry and biology, and a "D" in English II, US History, and foundations of technology.

CONCLUSIONS:

ALLEGATION #1: IMPLEMENTING AN IEP THAT ADDRESSES THE STUDENT'S NEEDS

The public agency must ensure that as soon as possible following the development of the IEP, special education, and related services are made available to the child in accordance with the child's IEP. (34 CFR §300.323). In this case, the student's IEP requires that the student's special education instruction be provided in the general education classroom by a general education teacher in consultation with a special educator. There is no documentation that the special educator consulted with the general education teacher.

The IEP team is required to revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals, and in the general education curriculum; the results of any reevaluation; information about the child provided to, or by, the parents; and the child's anticipated needs (34 CFR § 300.324). In this case, the student was making sufficient progress to meet his IEP goals, but he was struggling to obtain passing grades in his core classes demonstrating difficulty accessing grade-level curriculum, specifically English II and US History.

Based on the Findings of Fact #1, #4 to #6, #8, #10, #13, and #14, MSDE finds that the CCPS has not implemented an IEP that addressed the student's identified needs since the start of the 2023-2024 school year, in accordance with 34 CFR §§300.101, .323, and .324. Therefore, this office finds that a violation did occur concerning the allegation.

ALLEGATION #2: PROVISION OF IEP SUPPORTS

Based on the Findings of Fact #1, #4 to #6, and #12 to #14, MSDE finds that the CCPS has not ensured that the student was provided with the special education supports and accommodations as required by the IEP since the start of the 2023- 2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation did occur concerning the allegation.

ALLEGATION #3: ADDRESSING PARENT CONCERNS

Based on the Findings of Fact #2 to #4, #8, #9, and #11 to #14, MSDE finds that the CCPS has not ensured that the IEP team addressed parental concerns about failing grades and IEP implementation during quarters one and two of the 2023-2024 school year, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did occur concerning the allegation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

SERVICE HOURS

The IEP must include the projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications (34 CFR §300.320). The U.S. Department of Education clarified that the IEP must "include information about the amount of services that will be provided to the child so that the level of the agency's commitment of resources will be clear to parents and other IEP Team members. The amount of time to be committed to each of the various services to be provided must be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP." (71 FR 46540-01 (2007)).

In the student's IEPs dated November 22, 2022, and November 14, 2023, the summary of services section is blank, and the discussion of services does not indicate how much special education instructional time the student will receive in each class on a daily basis.

Based on Findings of Fact #1 and #6, MSDE finds that the CCPS did not follow proper procedures when developing the student's IEP, in accordance with 34 CFR §300.347.

PRIOR WRITTEN NOTICE

The public agency is required to provide the parent of a student with a disability with prior written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student. This notice includes a description of the action proposed or refused, an explanation of the action, a description of each

evaluation procedure, assessment, record, or report used as a basis for the decision, a statement that the parents of a student with a disability have protection under the procedural safeguards and the means by which a copy of the description of the safeguards can be obtained, sources for parents to contact to obtain assistance in the understanding the provisions, a description of other options that the IEP team considered

and the reasons why those options were rejected, and a description of other factors that are relevant to the agency's proposal or refusal (34 CFR §300.503).

Based on Findings of Fact #6 and #7, MSDE finds that the CCPS did not provide prior written notice of the IEP team's decisions from the IEP team meetings held on November 14, 2023, in accordance with 34 CFR §300.503.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below. Accordingly, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it completes the required actions consistent with MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party seeks technical assistance, they should contact Ms. Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action. Ms. Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

Student-Specific

MSDE requires the CCPS to provide documentation by May 31, 2024, of the following actions:

- Provide the student with specialized instruction, accommodations, modifications, and supports required by his IEP;
- Amend the student's IEP to appropriately reflect the service description and summary of service information in the IEP;
- Provide the parent with proper PWN that reflects the decisions made at the November 14, 2023, IEP team meeting; and
- Convene an IEP team meeting and determine if the failure to provide accommodations, modifications, and supports and failure to address parent's concerns had a negative impact on the student's ability to benefit from the education program. If the IEP team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within one year of the date of this Letter of Findings.

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

The CCPS must ensure that the parent is provided with prior written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based:

MSDE requires the CCPS to provide documentation by May 31, 2024, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for the implementation of specialized instruction, accommodations, modifications, and supports, providing the parent with an appropriate PWN that reflects all changes to the student's IEP, developing an IEP that clearly provides the service description and summary of service information and addressing parent concerns under the IDEA. These steps must include staff development, as well as tools developed to monitor compliance. Monitoring must include a review of at least 15 randomly selected student records to review for the provision of accommodations, modifications, and supports. The monitoring report must be submitted to MSDE on or before July 1, 2024.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Antoine L. Hickman, Ed.D.
Assistant State Superintendent
Division of Early Intervention and Special Education Services

ALH/ebh

c: Dr. Maria Navarro, Superintendent, CCPS
LeWan Jones, Directory of Special Education, Compliance, CCPS
[REDACTED], Principal, CCPS
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Elizabeth B. Hendricks, Complaint Investigator, MSDE